

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Advanced Television Systems )  
and Their Impact Upon the )  
Existing Television Broadcast )  
Service )

MM Docket No. 87-268

To: The Commission

**PETITION FOR PARTIAL RECONSIDERATION**

Educational Television Association of Metropolitan Cleveland (ETAMC), through its attorneys, hereby files this petition for partial reconsideration of the Memorandum Opinion and Order on reconsideration of the Fifth Report and Order (Memo O & O I) and the Memorandum Opinion and Order on reconsideration of the Sixth Report and Order (Memo O & O II) in the above-captioned DTV proceeding. ETAMC urges the Commission to remedy the disparity and inequity in its treatment of NTSC applications for new and for modified facilities pending as of April 3, 1997. In support thereof, the following is shown:

1. ETAMC, which is the licensee of public television Station WVIZ, Cleveland, Ohio, filed reconsideration pleadings in these proceedings. ETAMC's Station WVIZ operates on Channel 25 at 2140 kW and has been allotted DTV facilities on Channel 26 at 66.9 kW. On January 11, 1996, well before the adoption of the initial DTV Table, ETAMC filed a minor application to increase the power of Station WVIZ to 5 megawatts (FCC File No. BPET-960111KF). That application remains pending at the Commission. However, the parameters proposed in that modification application were not considered by the Commission when pairing DTV Channel 26 with NTSC Channel 25.

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2. In its Memo O & O II, par. 136, the Commission refused requests that it should process all pending NTSC modification applications and grant them with full DTV replication of the requested NTSC facilities. In response to ETAMC's specific request for relief, the Commission observed that

service replication of DTV allotments is based on the facilities licensed as of April 3, 1997, the date of adoption of the Sixth Report and Order. Requests for modification of NTSC facilities that were pending on that date are not taken into account in the DTV allotment process for the purposes of service replication.

3. In contrast, in Memo O & O I, pars. 10-13, the Commission determined that applications for new NTSC facilities which were pending as of April 3, 1997 would be granted, with permittees afforded the additional benefit of choosing whether to construct as a digital station or as an analog station with conversion to DTV on that channel. The Commission explained that initial eligibility was limited to existing licensees and permittees as of April 3, 1997. No decision had been made as to assignment of DTV channels to applicants with pending NTSC applications. In support of its decision to permit participation by these NTSC applicants in the conversion to DTV, the Commission stated that these "parties did nothing to delay the processing of their applications and make themselves ineligible for initial DTV licenses." Under such circumstances, "it would be equitable to accommodate their desire . . ." (Id. at par. 12). The Commission noted also that "NTSC is a technology of the past that will cease to exist." In the Commission's words,

authorizing new analog stations that cannot evolve to digital operation would have significant public interest costs. It could limit the ability of the analog broadcaster to serve its viewers as well as it otherwise might; it could put the licensee at a competitive disadvantage vis-a-vis its emerging digital competitors.....

Furthermore, "allowing the transition to DTV would allow broadcasters to better serve their viewers on a local scale, and it could help facilitate the overall conversion from analog to digital broadcasting across the country." (Id., at par. 13) .

4. ETAMC submits that the treatment accorded by the Commission to NTSC applications for modification of facilities pending as of April 3, 1997 and NTSC applications for new facilities pending as of April 3, 1997 is disparate and unfair. The NTSC applications pending as of April 3, 1997, whether for new facilities or for modification of facilities, should be treated similarly, in order to achieve an even-handed and objective basis for Commission processing of these two groups of applications.

5. For instance, like the NTSC applicants for new facilities, the NTSC applicants for modification of facilities "themselves did nothing to delay the processing of their applications" and thus make themselves ineligible to establish a modified authorization for service replication. ETAMC's minor modification application was filed on January 11, 1996, fifteen months in advance of the April 3, 1997 date the Commission utilized for its engineering database for the DTV Table. ETAMC's modification application was in full technical compliance with the Commission's rules. Under normal Commission processing, grant of such an application should have occurred by the middle of 1996. Therefore, just like NTSC applications for new facilities, it would be "equitable to accommodate" the desire by applicants such as ETAMC for modification of their NTSC facilities. Memo O & O II, par. 12.

6. Moreover, for ETAMC as for new NTSC applicants, "NTSC is a technology of the past". ETAMC is, like NTSC applicants for new facilities, seeking to "evolve to digital operation". ETAMC of course has an active interest in the pending proposal for a

power increase for its NTSC Station WVIZ. As ETAMC stated in that application, an increase in effective radiated power

will improve reception to the east where the attributes of UHF transmission and hilly terrain combine to cause several areas to experience marginal reception. Cable headends in these areas frequently find themselves providing WVIZ to their subscribers at less than ideal quality.

Moreover, in addition to serving the general public, WVIZ provides important services to schools in a 17-county area, and a "portion of these schools lie in areas where improved reception is needed". Nonetheless, another substantial aim by ETAMC has been to increase power in order to augment its engineering database for determination of appropriate service replication for its DTV facilities of the future on DTV Channel 26. Any decision by the Commission limiting pending NTSC modification applications to analog service, like any comparable Commission decision limiting pending NTSC applications for new facilities to analog service, would be contrary to the public interest. As the Commission itself noted, such limitations to analog service would restrain "the ability of the analog broadcaster to serve its viewers as well as it otherwise might." Likewise "it could put the licensee at a competitive disadvantage vis-a-vis its emerging digital competitors" Memo O & O II, par. 13. The same rationale which serves to justify the Commission's policy determinations regarding the treatment of pending applications for new NTSC facilities filed as of April 3, 1997 also applies in full to the treatment which should be accorded to pending applications for modified NTSC facilities filed as of April 3, 1997. ETAMC urges the Commission, upon reconsideration, to apply to applications for pending NTSC modification applications (including ETAMC's pending application) the same rationale and policy determination reached with respect to applications for pending NTSC applications for new facilities.

7. ETAMC also seeks reconsideration of that portion of the Commission's policy regarding pending applications for new NTSC stations which fails to provide DTV channels for the existing reserved analog channels which are the subject of pending applications for new public television stations. Memo O & O I, par. 11 In ETAMC's view, this failure by the Commission is both arbitrary and unfair. All existing licensees and permittees as of April 3, 1997 have been allotted a paired DTV channel. The Commission has failed to articulate any reasoned analysis for its refusal to allot a paired DTV channel for new permittees. The Commission merely states in conclusory fashion that "They will not be awarded a second channel to convert to DTV. . ." Id.

8. The Commission's policy regarding new stations poses substantial risks for these permittees which are not posed for existing licensees and permittees with paired channels. The permittee for a new public television station has no assurance that the existing reserved channel in the NTSC Table will be feasible in terms of interference to or from existing authorized DTV channels in the Commission's DTV Table. Because of these DTV constraints, It has no assurance that it will be able to operate in a manner designed to provide meaningful service to its proposed service area. These concerns are compounded where the allotted new channel is an out-of-core channel. In this connection, ETAMC is an applicant for a new NTSC public television station on out-of-core Channel \*58 at Youngstown, Ohio (File No. BPET-960919LA). Pursuant to the Commission's policy concerning pending applications for new NTSC facilities as of April 3, 1997, ETAMC may request authorization to convert to DTV operations on an alternative in-core channel, presumably at the end of the transition period. However, ETAMC has no assurance that any such channel will be available in the future. It

submits that the Commission should, on reconsideration, carefully review the proposals by applicants for new NTSC public television stations, such as ETAMC, and seek to determine whether channels are available at the present time to allot an in-core channel for the reserved channel proposed in the applications, and to allot a paired DTV in-core channel as well wherever possible. Only in this way will the Commission provide treatment to permittees for new public television stations that is fair and equal to the treatment afforded existing licensees and permittees.

WHEREFORE, for all of foregoing reasons, the Commission upon reconsideration, should grant the relief set forth above.

Respectfully submitted,

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